

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, NOVEMBER 13, 2020**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m. on Friday, November 13, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, November 12, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in Department 3, located at 101 Maple Street, Auburn, California.

PLEASE NOTE: TELEPHONIC APPEARANCE IS STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. S-CV-0016410 Wallace, Richard, et al vs. Monier Lifetile LLC, et al

Plaintiff Classes' Motion for Preliminary Approval of Class Action Settlement

The unopposed motion is granted. The court has broad discretion in determining whether (1) a settlement is fair and reasonable, (2) the class notice is adequate, and (3) certification of the class is proper. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389.) The court has carefully reviewed and considered the joint stipulation of class action settlement and plaintiff's moving papers filed in connection with the motion. The court determines a sufficient showing has been made that the settlement is fair and reasonable.

For the purposes of the settlement, the court hereby certifies the class as defined in paragraphs f(1) and f(2) of the Agreement of Compromise and Settlement. The court preliminary approves the Agreement of Compromise and Settlement, approves the proposed form of the notice, and incorporates by references the findings and orders outlined in the proposed order.

The final approval hearing is set for Friday, January 15, 2021 in Department 3 located at the Historic Auburn Courthouse.

Plaintiff Classes' Motion for Inclusion of Prejudgment Interest in the Judgment

The motion is dropped as moot in light of the court's ruling on the motion for preliminary approval of class action settlement.

2. S-CV-0029911 Sahansra, Kulvinder Singh vs. Myers, Sandra Rae

As a preliminary matter, petitioner is admonished that his State Bar membership number must be stated on his filings. Cal. R. Ct., rule 2.111(1).

Petitioner's motion for an order directing the clerk to enter satisfaction of judgment is granted.

Pursuant to Code of Civil Procedure section 724.050, petitioner establishes that he satisfied a money judgment entered in this action on December 19, 2016, and demanded in writing that judgment creditor Sandra Myers either file satisfaction of judgment with the court, or execute, acknowledge and deliver acknowledgment of satisfaction of judgment to petitioner. Judgment creditor failed to comply with the demand within 15 days, as required by Code of Civil Procedure section 724.050.

Pursuant to Code of Civil Procedure section 724.050(d), the court clerk is ordered to enter satisfaction of judgment with respect to the judgment entered in this action on December 19, 2016, against petitioner Kulvinder Singh Sahansra. Pursuant to Code of Civil Procedure section 724.050(e), petitioner is awarded the sum of \$100 from judgment creditor Sandra Myers, as Ms. Myers failed to act with just cause in refusing to comply with the demand. Petitioner's request for \$2500 in attorneys' fees is denied. Petitioner is admonished that under settled law, attorneys representing themselves as pro se litigants are not entitled to attorneys' fee awards. *Trope v. Katz* (1995) 11 Cal.4th 274, 292.

3. S-CV-0036383 Weiss, Craig vs. Carmax Superstores California, LLC, et al

The motion for final approval of class action settlement is continued to December 10, 2020, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

4. S-CV-0041701 W.J. Kavanagh Constr. Mgmt., Inc. vs. Mael, Jeremy, et al

Defendants Jeremy Mael, Heather Mael, Hank Mael and Cindy Mael (collectively "the Maels") move to enforce the terms of their settlement agreement with cross-defendant Tony Walker Painting, Inc. ("Walker").

If the parties so stipulate, the court may retain jurisdiction to enforce the terms of the parties' settlement agreement until full performance thereof. Code Civ. Proc. § 664.6. In ruling on a motion to enforce pursuant to Code of Civil Procedure section 664.6, the court may not create material terms of the settlement agreement. *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182-1183.

The settlement agreement between the Mauels and Walker contains the following terms:

¶B(3): Mauels and Walker shall conduct a walk-through of the Subject Property, both interior and exterior, on a mutually agreeable date and develop a room-by-room and exterior timeline for the Repair Work.

¶B(8): Mauels and Walker shall agree on a neutral expert (“NE”) to approve the Repair Work as guided by the report of disclosed expert Jay Kuhre. The NE’s decision shall be binding.

¶B(10): Walker shall pay the first \$2,000.00 of the NE’s fees and costs, and Mauels and Walker shall share equally (50/50) in the NE’s fees and costs over \$2,000.00.

¶B(11): The NE will identify and observe the Subject Property both prior to, and following, the Repair Work.

¶B(12) The NE initial inspection shall take place within fifteen (15) days of such inspection being allowed by removal of any order from the State of California or Placer County (collectively the Associated Government Agencies”) regarding Stay-At-Home requirements associated with COVID-19 (“Inspection Date”).

¶B(13) The Repair Work shall be completed within sixty (60) days of the Inspection date unless prevented by further orders from the Associated Government Agencies.

(Declaration of Kathleen C. Lyon, Exh. A.)

As described in the declaration of counsel, Walker has failed to pay his share of the cost for the NE, has failed to schedule a walk-through with the Mauels to develop a timeline for the Repair Work, and attempted to begin work without complying with preliminary terms required by the settlement agreement. Walker apparently concedes these points, but argues that the settlement agreement was modified by subsequent oral agreement or conduct by the Mauels. However, Walker fails to establish modification of the settlement agreement as the agreement expressly provides that it can be modified only by a writing executed by all parties thereto.

The motion is granted as follows:

1. Walker is ordered to pay \$2947.40 to Forensis Group in order to retain Jay Kuhre as the agreed-upon neutral expert (“NE”), and if not already done, the Mauels shall also pay their share of the cost to retain Jay Kuhre, within 15 days of entry of order;

2. At a mutually agreeable time, within 15 days of entry of order, or as soon thereafter as Mr. Kuhre is available, Walker shall attend a walk-through of the property with Mr. Kuhre and one or more of the Mauels, at which time Walker and the Mauels shall develop a room-by-room and exterior timeline for the Repair Work;
3. The Repair Work shall be completed in accordance with the terms of the settlement agreement.

5. S-CV-0041807 Boyle, Barbara vs. County of Placer, et al

As a preliminary matter, the court has not considered the supplemental opposition filed by plaintiff on October 14, 2020, without leave of court. Although plaintiff's first opposition violates the page limit requirements of California Rules of Court, rule 3.1113(d), the court has exercised its discretion in considering the arguments made therein.

Defendants' request for judicial notice is granted.

Defendants County of Placer and Sheriff Devon Bell demur to plaintiff's second amended complaint.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. A demurrer can only be used to challenge defects that appear on the face of the pleading, or from matters that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. No other extrinsic evidence may be considered. *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.

Moving defendants contend that the applicable statute of limitations bars plaintiff's action. Plaintiff's claims in this action are governed by the limitations period set forth in Government Code section 945.6(a), which states:

Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b), any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced:
(1) If written notice is given in accordance with Section 913, not later than six months after the date such notice is personally delivered or deposited in the mail.

Plaintiff alleges that she filed a government claim with Placer County on November 7, 2017, and that the claim was rejected on or about December 7, 2017. (SAC, ¶ 10.) This

action was then filed on October 5, 2018, approximately 10 months after notice of the rejection. Pursuant to Government Code section 945.6(a), plaintiff's claims are barred unless tolling applies. In a prior ruling, the court found that 28 U.S.C. section 1367(d) was inapplicable to supplemental state claims brought in a federal action which was voluntarily dismissed by the plaintiff. Plaintiff was given leave to amend additional facts to support equitable tolling under California's common law equitable tolling doctrine.

To establish equitable tolling under California law, plaintiff must allege "(1) timely notice to defendants in filing the first claim; (2) lack of prejudice to defendants in gathering evidence to defend against the second claim; and (3) good faith and reasonable conduct by the plaintiffs in filing the second claim." *Downs v. Dept. of Water & Power* (1997) 58 Cal.App.4th 1093, 1100. Timely notice means the first claim was filed within the statutory period, and the filing must alert defendant to the need to begin investigating the facts that form the basis for the second claim. *Tarkington v. Cal. Unemployment Ins. Appeals Board* (2009) 172 Cal.App.4th 1494, 1503; *see also Addison v. State of California* (1978) 21 Cal.3d 313, 319; *Collier v. City of Pasadena* (1983) 142 Cal.App.3d 917, 924. The lack of prejudice requirement "essentially translates to a requirement that the facts of the two claims be identical or at least so similar that the defendant's investigation of the first claim will put him in a position to fairly defend the second." *Collier v. City of Pasadena, supra*, 142 Cal.App.3d at 925. As to the third requirement of good faith and reasonable conduct, it "may turn on whether 'a plaintiff delayed filing the second claim until the statute on that claim had nearly run,' or 'whether the plaintiff [took] affirmative action which misle[d] the defendant into believing the plaintiff was foregoing his second claim.'" *Tarkington v. Cal. Unemployment Ins. Appeals Board, supra*, 172 Cal.App.4th at 1505, quoting *Collier v. City of Pasadena, supra*, 142 Cal.App.3d at 926. Bad faith generally means an intent to delay disposition of the case without good cause. *Mojica v. 4311 Wilsire, LLC* (2005) 131 Cal.App.4th 1069, 1074.

In support of her claim of equitable tolling, plaintiff alleges that "[o]n or about June 7, 2017, plaintiff filed a Civil Rights Action, pursuant to 42 United States Code section 1983, in the United States District Court, Eastern District of California." (SAC, ¶ 11.) Following certain issues related to plaintiff's fee waiver application, and based on fear that the federal case was subject to involuntary dismissal, plaintiff dismissed the federal case on October 4, 2018. (*Id.*) The instant action was filed one day later.

Service of a timely government claim is not "notice" for purposes of equitable tolling. *Dowell v. County of Contra Costa* (1985) 173 Cal.App.3d 896, 903. *Brome v. California Highway Patrol* (2020) 44 Cal.App.5th 786, cited by plaintiff, is distinguishable as that case examined a claim made under the workers' compensation scheme, as opposed to a government tort claim under Government Code sections 945 *et seq.* As noted, to establish timely notice, plaintiff must show both that the first claim was filed within the statutory period, and that the defendant was alerted to the need to begin investigating the facts forming the basis for the second claim. *Tarkington v. Cal. Unemployment Ins. Appeals Board, supra*, 172 Cal.App.4th at 1503; *see also Addison v.*

State of Cal., supra, 21 Cal.3d at 319 (“defendants were notified of the action and had the opportunity to begin gathering their evidence and preparing their defense.”)

The second amended complaint alleges that the federal action was filed within the statutory period. However, plaintiff does not allege any facts showing that defendants were on notice of the filing of the federal action. The docket for the federal court action does not show service of the complaint on defendants, and plaintiff concedes that defendants were not served with the federal complaint. Plaintiff has otherwise alleged no facts showing that defendants were alerted to the need to begin investigating the facts forming the basis for plaintiff’s action within the statutory period. Absent a showing of notice to defendants, plaintiff fails to allege equitable tolling.

Based on the foregoing, each of the claims alleged against moving defendants is barred by the applicable statute of limitations. Although plaintiff has requested leave to amend, she describes no manner in which the complaint could be amended to cure this defect. Further, the court previously granted plaintiff leave to amend for the express purpose of pleading additional facts to support application of the equitable tolling doctrine, and after filing the first amended complaint, plaintiff was again granted leave to file the second amended complaint. The second amended complaint remains deficient, and plaintiff fails to establish a reasonable possibility that the defect can be cured to state valid claims.

The demurrer is sustained without leave to amend.

6. S-CV-0043329 Duran, Victor vs. Cherokee Trail LLC, et al

Defendant Jennifer Wilson’s motion for leave to file an amended answer is granted. The amended answer shall be filed and served on or before November 30, 2020.

7. S-CV-0044495 Roberts, James A vs. Varma, Vanita, et al

Defendant and cross-complainant Vinita Varma’s motion to amend cross-complaint is granted. The amended cross-complaint shall be filed on or before November 30, 2020.

8. S-CV-0044635 Helena Agri-Enterprises, LLC vs. Singh, Sumanpreet, et al

Application for Right to Attach Order and Writ of Attachment (Madison Farms, Inc.)

Plaintiff’s application for writ of attachment and right to attach order (Madison Farms, Inc.) is granted.

An attachment may issue if the claim sued upon is based upon a contract, for a fixed or readily ascertainable amount not less than \$500, that is unsecured or secured by personal property, and arising against a defendant who is a natural person for claims arising out of conduct by the defendant of a trade, business or profession. Code Civ. Proc. § 483.010(c). Damages must be measurable by reference to the contract itself, and the

basis for computing damages must be reasonable and certain. *CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 541. Based upon review of the plaintiff's application, the court finds pursuant to Code of Civil Procedure section 483.010 that plaintiff has established the probable validity of the claim upon which the attachment is based, and that attachment is not sought for an improper purpose.

Plaintiff is granted the right to attach any property of defendant Madison Farms, Inc., in the amount of \$127,141.41, including estimated costs of \$1,000 and estimated attorneys' fees of \$10,000. The clerk shall issue the writ of attachment upon plaintiff's filing of an undertaking in the amount of \$10,000.

Application for Right to Attach Order and Writ of Attachment (Sumanpreet Singh)

Plaintiff's request for judicial notice is granted.

Plaintiff's application for writ of attachment and right to attach order (Sumanpreet Singh) is granted in part as set forth below.

An attachment may issue if the claim sued upon is based upon a contract, for a fixed or readily ascertainable amount not less than \$500, that is unsecured or secured by personal property, and arising against a defendant who is a natural person for claims arising out of conduct by the defendant of a trade, business or profession. Code Civ. Proc. § 483.010(c). Damages must be measurable by reference to the contract itself, and the basis for computing damages must be reasonable and certain. *CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 541. Based upon review of the plaintiff's application, the court finds pursuant to Code of Civil Procedure section 483.010 that plaintiff has established the probable validity of the claim upon which the attachment is based, and that attachment is not sought for an improper purpose.

With respect to the property to be attached, plaintiff's application identifies five separate parcels of real property by Assessor's Parcel Number: (1) APN 055-220-003-000; (2) APN 049-100-030-000; (3) 049-100-031-000; (4) 095-080-036-000; and (5) 093-040-061-000. In response to the court's request for additional information evidencing defendant Sumanpreet Singh's ownership of the five properties, plaintiff filed a supplemental request for judicial notice, which requests judicial notice of grant deeds relating to parcels of real property with the following Assessor's Parcel Number: (1) APN **055-220-003-000**; (2) APN 094-060-85-100; (3) APN **095-080-36-100**; (4) APN **093-040-61-100**; (5) APN **049-100-023**; and (6) APN **049-100-023-000**. **The only** Assessor's Parcel Number matching a property identified in the application is APN 055-220-003-000.

Plaintiff is granted the right to attach the real property identified as APN 055-220-003-000, to the extent of defendant Sumanpreet Singh's 50% interest. Attachment shall be permitted in the amount of \$379,874.02, including estimated costs of \$1,000 and

estimated attorneys' fees of \$15,000. The clerk shall issue the writ of attachment upon plaintiff's filing of an undertaking in the amount of \$10,000.

9. S-CV-0044639 Baker, Trent Claude vs. McDaniel, Bojordan Edwards, et al

Defendant Bojordan McDaniel moves for appointment of counsel in this action.

Where a prisoner is threatened with a civil action that may deprive the inmate of property, he or she must be given a meaningful opportunity to be heard. *Payne v. Superior Court* (1976) 17 Cal.3d 908, 922. The court must determine if the prisoner is indigent, and if so, whether the lawsuit presents a bona fide threat to his or her property interests. *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795-796. If so, the court should exercise its discretion to select an appropriate remedy to effectuate the right to access. *Id.* at 796.

In this case, defendant asserts that he is an indigent inmate whose property interests are threatened by the current lawsuit. Defendant requests that the court appoint counsel to represent him in this action.

Defendant has identified no actual property rights at issue. Defendant provides no information for the court's consideration regarding the potential for loss with respect to anticipated future property rights. Defendant does not suggest that appointment of counsel will impact his ability to dispute liability in this case, particularly in light of the fact that the current action arises from facts underlying a related criminal matter for which defendant is currently incarcerated. Further, defendant does not demonstrate that there are no better alternatives to provide him access to the court. *See Yarbrough v. Superior Court* (1985) 39 Cal.3d 197, 201 ("In an appropriate case, and as a last alternative, appointment of counsel may be the only way to provide an incarcerated, indigent civil defendant with access to the courts for the protection of threatened personal and property rights"); *see also Payne v. Superior Court, supra*, 17 Cal.3d 908.

Based on the foregoing, defendant's motion for appointment of counsel is denied.

10. S-CV-0044677 Asset Commercial Credit vs. Atazz Technical Services, Inc.

The motion to be relieved as counsel is continued to November 20, 2020, at 8:30 a.m. in Department 3.

11. S-CV-0044959 Tharp, Dylan vs. John L. Sullivan Dodge Chrysler, Inc.

Defendant John L. Sullivan Dodge Chrysler, Inc. moves to compel arbitration of plaintiff's claims in this action, and for a stay of the action pending arbitration.

The arbitration statutes evidence a strong public policy in favor of arbitration that is frequently approved and enforced by the courts. *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 706; *Laswell v. AG Seal Beach, LLC, et al* (2010) 189

Cal.App.4th 1399, 1405. Under both federal and state law, a threshold question for any petition to compel arbitration is whether there exists an agreement to arbitrate. *Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396. In this case, plaintiff concedes that his claims, except for PAGA claims added by amendment after the filing of defendant's motion, are subject to a valid arbitration agreement. However, plaintiff argues that defendant has waived the right to compel arbitration.

Because the law favors arbitration, the party claiming waiver "bears a heavy burden of proof." *Saint Agnes Med. Center v. PacifiCare of Cal.* (2003) 31 Cal.4th 1187, 1195. A party seeking to establish waiver of the right to arbitration must demonstrate "(1) knowledge of an existing right to compel arbitration; (2) acts inconsistent with that existing right; and (3) prejudice to the party opposing arbitration." *United States v. Park Place Assocs., Ltd.* (9th Cir. 2009) 563 F.3d 907, 921. The court may examine several factors in determining whether there has been a waiver including (1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether the litigation machinery has been substantially invoked; (3) proximity to the trial date or delay in seeking a stay; (4) the filing of a counter-claim; (5) other important intervening steps such as taking advantage of judicial discovery procedures unavailable in arbitration, and (6) prejudice to the opposing party. *Saint Agnes Med. Center v. PacifiCare of Cal.*, *supra*, 31 Cal.4th at 1196. The presence or absence of prejudice to the opposing party is a determinative issue. *Id.* at 1203-1204.

In this case, plaintiff fails to satisfy his heavy burden of proof to show that defendant waived the right to arbitration. The filing of an answer, by itself, does not waive the right to demand arbitration. *Christensen v. Dewor Dev.* (1983) 33 Cal.3d 778, 782. Contrary to claims made by plaintiff, defendant did not ignore prior requests to arbitrate made by plaintiff, and the litigation machinery has not been substantially invoked. Approximately two months after being served with the complaint, defendant requested that plaintiff stipulate to arbitration, and filed its answer only after its requests were ignored. The parties have not engaged in substantial discovery efforts, or filed any other contested pretrial motions, and trial has not been set. Further, plaintiff does not establish prejudice. Prejudice may be found where the moving party has unreasonably delayed seeking arbitration, or substantially impaired an opponent's ability to use the benefits and efficiencies of arbitration. *Saint Agnes Med. Center v. PacifiCare of Cal.*, *supra*, 31 Cal.4th at 1203-1204; *see also Davis v. Continental Airlines, Inc.* (1997) 59 Cal.App.4th 205, 212-216 (extensive discovery undertaken which was unavailable in arbitration proceedings).

Based on the foregoing, defendant's motion to compel arbitration is granted. The claims alleged by plaintiff in this action, except for claims alleged under the Labor Code Private Attorneys General Act of 2004 (PAGA), shall be arbitrated pursuant to the binding arbitration agreement between the parties. This action is stayed pending the outcome of the arbitration.

The case management conference set February 16, 2021, is hereby vacated.

The court sets an order to show cause re status of arbitration on June 15, 2021, at 11:30 a.m. in Department 40. The parties shall file declarations regarding the status of the arbitration proceedings at least five court days prior to the order to show cause hearing.

12. S-CV-0045537 Conrad, Ethan vs. Tran, Bao, et al

The scheduled hearing is dropped in light of the dismissal of the action with prejudice entered November 2, 2020.
